No. 11909

United States
CIRCUIT COURT OF APPEALS
For The Ninth Circuit

HAWAIIAN TRUST COMPANY, LIMITED,
Executor of the Will of Laura D. Sherman,
Deceased,

Appellant,

vs.

AGNES M. KANNE,
Executrix under the Will of Fred H. Kanne,
Deceased,

Appellee.

REPLY BRIEF FOR HAWAIIAN TRUST COMPANY, LIMITED, EXECUTOR OF THE WILL OF LAURA D. SHERMAN, DECEASED

On Appeal from the District Court of the United States for the Territory of Hawaii

SUBJECT INDEX

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INTRODUCTION

There are four principal contentions made in the brief for appellee:

1. That the assignments were of future income only, and the assignees acquired no interest in the principal of the trust.

2. That the assignor's reversionary interest constituted a substantial economic interest in the trust.

3. That the fact Laura D. Sherman was a co-trustee of the trust brings the case within the rule of *Helvering* v. *Clifford,* 309 U.S. 331, 60 S. Ct. 554.

4. That sections 161(b) and 162(b) of the Internal Revenue Code impose income tax on a named beneficiary of a trust but not upon her assignees.

We propose to answer these contentions and the arguments advanced in support of them in that order.

ARGUMENT

1. THE ASSIGNEES ACQUIRED A PROPERTY INTEREST IN THE TRUST.

Appellee's contention that the assignments were OF future income only is unsupported by any authority. It overlooks the fact that the right to receive income from a trust is the genesis of a property right in the trust, because of the other rights concerning enforcement of the trust which necessarily go with that right to receive income. *Blair* v. *Commissioner* 300 U.S. 5, 57 S. Ct. 330, *Scott on Trusts* Sec. 130. Further, the right of an assignee of a beneficiary to enforce the trust is unquestioned. *Blair* v. *Commissioner supra, Restatement of the Law of Trusts* Sec. 200, Comment f.

The only support offered by appellee for the contention that income only was here assigned is the argument that technically less than the whole life interest

of Laura D. Sherman was transferred to her assignees. No authority is offered in support of this contention or argument. On the other hand, it is clear that a beneficiary may assign a *part* of his interest. *Restatement of the Law of Trusts* Sec. 132, Comment b. In *Harrison* v. *Schaffner*, 312 U.S. 579, 61 S. Ct. 759, relied on by the appellee, the Court recognized that an assignment by a life beneficiary of a trust of income for a period of a year was accompanied by a transfer of the property producing that income, saying at page 583 of 312 U.S.:

> "Even though the gift of income be in form accomplished *by the temporary disposition of the donor's property which produces the income*, the donor retaining every other substantial interest in it, we have not allowed the form to obscure the reality."
> (Emphasis ours).

The *Blair* case and *Helvering* v. *Horst*, 311 U.S. 112, 61 S. Ct. 144, established that a transfer of income producing property is a necessary pre-requisite if the income therefrom is to be taxable to the assignee. The *Horst* case distinguished the *Blair* case on this ground. The *Schaffner* case accepts this but goes on to hold that that factor alone is not decisive in rendering assigned income taxable to the assignee and holds that the principles involved in *Helvering* v. *Clifford*, 309 U.S. 331, 60 S. Ct. 554, will be applied to determine whether a transfer of income producing property will result in the income therefrom being taxable to the transferor or the transferee.

Appellee also argues that the circumstance that the assignees would be unable to require an invasion of

corpus in the event the annual income of the trust fell below $3,000 shows that the assignees had no interest in the "principal" of the trust. A similar assertion is made with respect to the provisions in Paragraph 13 of the trust (Tr. p. 18), which provides that the trust may not be amended to permit or authorize "the payment or application of the principal of the trust estate to or for the benefit of the Settlor's said wife". All this simply amounts to a discussion of the fact that Laura D. Sherman was an *income* beneficiary of the trust and that her assignees would acquire rights of the same nature. The fact that the trustees would not be entitled to take principal out of the trust and pay it to or expend it for the benefit of Laura D. Sherman or her assignees in no way establishes that Laura D. Sherman and her assignees did not have property interests in the trust. The beneficiary and his assignees in the *Blair* case also had no right to payments of principal, but the Court held that each had property interests in the trust. We submit that this latter portion of appellee's argument is not germane to the issues of this case.

2. THE REVERSION RETAINED BY LAURA D. SHERMAN WAS NOT SUBSTANTIAL.

The Appellee argues on pages 13 and 14 of his brief that if the interests assigned were substantial, it follows *a fortiori* that the reversion was substantial. Substantiality is a relative matter and this reasoning completely overlooks the disparity in the time and contingency factors affecting the relative substantiality of these interests. The interests assigned were all for terms in excess of ten years, or the reasonable equiva-

lent thereof, unless cut short by contingencies not as likely to occur as the contingency of the death of Laura D. Sherman prior to the termination of the assigned interests. Accordingly the interests assigned were far more substantial than the reversion of those same interests.

3. THE PRESENT CASE IS NOT WITHIN THE FACTS, PURPOSE OR RULE OF *HELVERING* V. *CLIFFORD*, 309 U.S. 331, 60 S. Ct. 554.

The appellee argues that Laura D. Sherman's powers as co-trustee bring the case within the rule of *Helvering* v. *Clifford, supra.* There is a similarity in the basic issue presented in the *Clifford* case and the present case but the facts of this case bear no resemblance to those found in *Clifford.* To state the facts of the *Clifford* case is an adequate refutation of appellee's argument. In *Clifford*, the taxpayer created a five year trust with himself as trustee and his wife as the exclusive beneficiary of income. All principal reverted to the taxpayer at the end of the five year term. The taxpayer as trustee had complete discretion as to the management and use of principal and the payment or accumulation of income. It was further conceded by the taxpayer that the "tax effects" of the creation of the trust were considered in connection with its creation. The Court stated that although none of these facts alone was decisive (the short duration of the trust, the intimate family relation, the tax avoidance aspects and the complete control of the grantor-trustee over the administration of the trust), taken collectively they were a sufficient basis for the finding that the husband was still the owner of the corpus for the purposes of section

22(a) of the Revenue Code. The Court was impressed WITH ~~that~~ the fact that the taxpayer's economic position was in this particular case substantially the same after the creation of the trust as before. Mrs. Sherman's situation could scarcely be similarly characterized as is pointed out in our opening brief at pages 15 to 17.

Appellee also argues that as co-trustee, Mrs. Sherman could have manipulated the investments so as to reduce the income payable under the assignments. Such a possibility is utterly fantastic but, assuming for the sake of argument that she might have done so, it would in no way have been an exercise of control which could have benefited her in any way or in any way have retained her economic position as it was prior to the execution of the assignments. This latter is the type of control contemplated in *Clifford* and in the Clifford Regulations. (Infra, Appendix). She was the income beneficiary of the trust and was not entitled to receive the principal thereof at any time and any control which she might have exercised as co-trustee is not the type of control nor could it be exercised for the purpose contemplated by the Court in the *Clifford* case. It should be pointed out, however, that under all the facts here, that (1) no such power of manipulation existed and (2) that there was not the faintest possibility of an attempt ever being made to exercise such power legally or illegally. During the years 1940 and 1941 income of the trust was in excess of nine and ten thousand dollars per year, respectively. (Tr. pp. 47-48). Because of the assignments, the assignees were entitled to $3,000 annually of this income, Laura D. Sherman the balance. To affect the assignees at all a reduction of the income by more than two-thirds

would have been required. It is not within the bounds of reason to expect that this could have been accomplished without a breach of trust enjoinable or redressable at the suit of the assignees. Accordingly, the practical power to make such manipulations never had any legal existence. Further, with respect to the possibility of an attempt to exercise such power, it should be remembered that it could not have been accomplished without the concurrence of the corporate co-trustee and would, of course, have resulted in complete and final loss to Laura D. Sherman of all income from the trust during such period. This is hardly the type of control which would have impressed the Court in the *Clifford* case, or any other court for that matter, as being a sufficient basis for a finding that this possible power resulted in the assignor remaining in substantially the same economic position after the assignment as he was in before.

A further answer to appellee's contention is supplied by the so-called Clifford Regulations (Regulations 111, Sec. 29.22(a)-21 Infra, Appendix). These regulations are not directly applicable here inasmuch as by their terms they apply to the taxability of trust income during the taxable years commencing January 1, 1946. They do, however, represent the views of the Commissioner of Internal Revenue as to the construction of section 22(a) of the Internal Revenue Code and his interpretation and extension of the *Clifford* rule, and he has announced a general policy of not asserting taxability of income in other taxable years, where such income would not be taxable under these regulations (Mim. 5968, Jan. 4, 1946). It so happens that by analogy to these regulations, the income assigned for

the two children is by precise provision of the regulations not taxable to the assignor, being either for their lives or for periods in excess of ten years, and without retention in the assignor of the powers of disposition or administration set forth in the regulations. The same is also true as to the assignment for the benefit of Anna Adams Nott. Every factor of the assignment, that is, the lack of retention of the powers of disposition or administration and termination of the interest upon the death of Anna Adams Nott, being specifically covered by the regulations. The only aspect of this transfer not covered by precise definition in the regulations is the possible termination on the contingency of her re-marriage. As to this, under the regulations, it would have to be determined whether the contingency was of "insubstantial character" in so far as the possibilities of Laura D. Sherman surviving the happening of that contingency was concerned. (Paragraph (c) of Sec. 29.22(a)-21. Infra, Appendix, p. 12). The contingency of re-marriage, being entirely outside the control of the assignor and one which might well never happen at all, can scarcely be classed as insubstantial. Yet despite all this and the further fact that the Clifford Regulations go far beyond anything established in the *Clifford* case, appellee has here contended that the assignments in this case come within the rule of the *Clifford* case.

4. SECTIONS 161(b) AND 162(b) OF THE INTERNAL REVENUE CODE DO NOT REQUIRE THE IMPOSITION OF TAX UPON THE ASSIGNOR.

Appellee contends that sections 161(b) and 162(b) of the Internal Revenue Code tax the named benefici-

ary of the trust but not her assignees. Precisely the same argument was advanced by the government in the *Blair* case and it was finally and definitely rejected by the Supreme Court as follows:

> "The Government points to the provisions of the revenue acts imposing upon the beneficiary of a trust the liability for the tax upon the income distributable to the beneficiary. But the term is merely descriptive of the one entitled to the beneficial interest. These provisions cannot be taken to preclude valid assignments of the beneficial interest, or to affect the duty of the trustee to distribute income to the owner of the beneficial interest, whether he was such initially or becomes such by valid assignment. The one who is to receive the income as the owner of the beneficial interest is to pay the tax." (P. 12 of 300 U.S.).

Further comment by us seems unnecessary.

It is requested that the Judgment of Dismissal of the United States District Court for the Territory of Hawaii be reversed and set aside, and that court directed to enter judgment for plaintiff accordingly.

Respectfully submitted,

James M. Richmond,
Attorney for Appellant,
Hawaiian Trust Company, Limited,
Executor of the Will of Laura
D. Sherman, Deceased.

APPENDIX

TREASURY REGULATIONS 111, SEC. 29.22(a)-21
(Clifford Regulations)

Reg. 111, Sec. 29.22(a)-21. *Trust income taxable to the grantor as substantial owner thereof.*—(a) *Introduction.*—Income of a trust is taxable to the grantor under section 22(a) although not payable to the grantor himself and not to be applied in satisfaction of his legal obligations if he has retained a control of the trust so complete that he is still in practical effect the owner of its income. *Helvering* v. *Clifford*, 309 U.S. 331 (40-1 USTC ¶9265). In the absence of precise guides supplied by an appropriate regulation, the application of this principle to varying and diversified factual situations has led to considerable uncertainty and confusion. The provisions of this section accordingly resolve the present difficulties of application by defining and specifying those factors which demonstrate the retention by the grantor of such complete control of the trust that he is taxable on the income therefrom under section 22(a). Such factors are set forth in general in paragraph (b) and in detail in paragraphs (c), (d) and (e), below.

(b) *In general.*—In conformity with the principle stated in paragraph (a) above, the income of a trust is attributable to the grantor (except where such income is taxable to the grantor's spouse or former spouse under section 22(k) or 171) if—

(1) the corpus or the income therefrom will or may return after a relatively short term of years (see paragraph (c));

(2) the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition (other than certain excepted powers), whether by revocation, alteration or otherwise, exercisable by the grantor, or another person lacking a substantial adverse interest in such disposition, or both (see paragraph (d)); or

(3) the corpus or the income therefrom is subject to administrative control, exercisable primarily for the benefit of the grantor (see paragraph (e)).

(c) *Reversionary interest after a relatively short term.*—Income of a trust is taxable to the grantor where the grantor has a reversionary interest in the corpus or the income therefrom which will or may reasonably be expected to take effect in possession or enjoyment—

(1) within 10 years commencing with the date of the transfer, or

(2) within 15 years commencing with the date of the transfer if the income is or may be payable to a beneficiary other than a donee described in section 23(o) and if any one or more of the following powers of administration over the trust corpus or income are exercisable solely by the grantor, or spouse (living with the grantor, and not having a substantial adverse interest in the corpus or income of the trust), or both, whether or not exercisable as trustee: a power to vote or direct the voting of stock or other securities, a power to control the investment of the trust funds either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, and a power to reacquire the trust corpus by substituting other property, whether or not of an equivalent value.

Where the grantor's reversionary interest is to take effect in possession or enjoyment by reason of some event other than the expiration of a specific term of years, the trust income is nevertheless attributable to him if such event is the practical equivalent of the expiration of a period less than 10 or 15 years, as the case may be. For example, a grantor is taxable on the income of a trust if the corpus is to return to him or his estate on the graduation from college or prior death of his son, who is 18 years of age at the date of the transfer in trust. Trust income is, however, not attributable to the grantor where such reversionary interest is to take effect in possession or enjoyment at the death of the person or persons to whom the income is payable.

In general, a reversionary interest may reasonably be expected to take effect in possession or enjoyment within 10 or 15 years, as the case may be, where the corpus or the income therefrom is to be reacquired if the grantor survives any stated contingency which is of an insubstantial character. Thus, the grantor is taxable where the trust income is to be paid to the grantor's wife for three years, and the corpus is then to be returned to the grantor if he survives such period, or to be paid to the grantor's wife if he is already deceased.

Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest is considered a new transfer in trust commencing with the date on which the postponement is effected and terminating with the date prescribed by the postponement. But income for any period shall not be taxable to the grantor by reason of the preceding sentence if such income would not be taxable to him in the absence of such postponement.

Example. A places property in trust for the benefit of his son B. Upon the expiration of 12 years or the earlier death of B the property is to be paid over to A or his estate. Neither A nor his wife has any power of administration over the trust corpus or income. After the expiration of nine years A extends the term of the trust for an additional two years. A is considered to have made a new transfer in trust for a term of five years. He is not taxable on the income for the first three years of such term because he would not be taxable thereon if the term of the trust had not been extended. A is taxable, however, on the income for the remaining two years.

(d) *Power to determine or control beneficial enjoyment of income or corpus.*—Income of a trust is taxable to the grantor where, whatever the duration of the trust, the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition (except as provided in section 167(c) and as hereafter provided in subparagraphs (1) to (4), inclusive), whether by revocation, alteration, or otherwise, exercisable (in any capacity and regardless of whether such exercise is subject to a precedent giving of notice or is limited to some future date) by the grantor, or any person not having a substantial adverse interest in the beneficial enjoyment of the corpus or income, whichever is subject to the power, or both. The grantor is not taxable, however, if the power, whether exercisable with respect to corpus or income, may only affect the beneficial enjoyment of the income for a period commencing 10 years from the date of the transfer (or 15 years where any power of administration specified in subsection (c) is exercisable solely by the grantor, or spouse living with the grantor, and not having a sub-

stantial adverse interest, or both, whether or not as trustee). For example, if a trust created on January 1, 1940 provides for the payment of income to the grantor's wife, and the grantor does not reserve any such administrative power but reserves the power to substitute other beneficiaries in lieu of his wife on or after January 1, 1950, the grantor is not taxable on the trust income for the period prior to January 1, 1950. But the income will be attributable to the grantor for the period beginning on such date unless the power is relinquished. If the beginning of such period is postponed, such postponement is considered a new transfer in trust commencing with the date on which the postponement is effected and terminating with the date prescribed by the postponement. But income for any period shall not be taxable to the grantor by reason of the preceding sentence if such income would not be taxable to him in the absence of such postponement. Where the income affected by the power is for a period beginning by reason of some event other than the expiration of a specific term of years, the grantor will be taxable if such event is the practical equivalent of the expiration of a period less than 10 or 15 years, as the case may be, in accordance with the criteria stated in paragraph (c).

The foregoing provisions of this paragraph shall not apply to any one or more of the following powers:

(1) a power exercisable only by will, other than a power in the grantor to appoint the income of the trust where the income is accumulated for such disposition by the grantor, or may be so accumulated in the discretion of the grantor, or any person not having a substantial adverse interest in the disposition of such income, or both. For ex-

ample, if a trust provides that the income is to be accumulated during the grantor's life and that the grantor may appoint the accumulated income by will, the grantor is taxable on the trust income;

(2) a power to determine the beneficial enjoyment of the corpus or the income therefrom if such corpus or income, as the case may be, is irrevocably payable for the purposes and in the manner specified in section 23(o);

(3) If (i) the power is exercisable by a trustee or trustees, none of whom is the grantor, spouse living with the grantor, or a related or subordinate trustee of the type and under all the conditions referred to in subparagraph (4) (ii), and (ii) the exercise of the power is not subject to the approval or consent of any person other than such trustee or trustees, this paragraph shall not apply to a power—

(A) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries,

(B) to pay out corpus to or for a beneciary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

The powers herein described include all the powers described in subparagraph (4), since the latter powers are more limited than those herein described.

(4) If the power—

(i) is exercisable by the grantor or spouse living with the grantor, or both, whether or not as trustee, or

(ii) is exercisable (A) solely by a trustee or trustees who include the father,

mother, issue, brother, sister, or employee of the grantor, or a subordinate employee of a corporation in which the grantor is an executive or in which the stockholdings of the grantor and the trust are significant from the viewpoint of voting control, and (B) in a manner which may affect the interests of beneficiaries which include the spouse or any child of the grantor (see subparagraph (3) for a power exercisable by a related or subordinate trustee of the class hereinabove described where the exercise of the power does not affect the interest of the spouse or a child of the grantor or where the power is exercisable only with the concurrence of an unrelated and non-subordinate trustee), or

(iii) is exercisable by any person or persons other than as trustee, or

(iv) is exercisable by any trustee or trustees, and the exercise of the power is subject to the approval or consent of any person or persons (other than such trustee or trustees), or of the grantor or spouse living with the grantor, or both, in the capacity of trustee,

this paragraph shall not apply—

(aa) to a power to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries), provided that the power is limited by a reasonably definite external standard. Such standard must be set forth in the trust instrument and must consist of needs and circumstances of the beneficiaries;

(bb) if the power is not limited by a reasonably definite external standard, to a power to pay out corpus to or for any current income beneficiary, provided that any such

payment of c o r p u s must be chargeable against the proportionate share of corpus held in trust for the payment of income to such beneficiary as if such corpus constitutes a separate trust;

(cc) to a power to distribute or apply income to or for any current income beneficiary or to accumulate such income for him, provided that any accumulated income must ultimately be payable to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors or the creditors of his estate; or, if payable upon the termination of the trust or in conjunction with a distribution of corpus which distribution is augmented by such accumulated income, is ultimately payable to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument. Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which may reasonably be expected to occur within the beneficiary's lifetime, the share of such deceased beneficiary is to be paid to such persons as the beneficiary may appoint, or is to be paid to one or more designated alternate takers (other than the grantor or the grantor's estate) if the share of such alternate taker or the shares of such alternate takers have been irrevocably specified in the trust instrument;

(dd) to a power, exercisable only during (1) the existence of a legal disability of any

current income beneficiary, or (2) the period in which any income beneficiary shall be under the age of twenty-one years, to distribute or apply income to or for such beneficiary or to accumulate and add such income to corpus;

(ee) in a case falling under subdivision (ii) hereof, to a power to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions in subdivision (cc) or (dd) are satisfied, provided that such power is limited by a reasonably definite external standard. For the requirements of such standard, see subdivision (aa) hereof.

A power does not fall within the powers described in subparagraphs (3) and (4) if the trustee is enabled to add to the class of beneficiaries designated to receive the income or corpus, except insofar as provision may be made for after-born or after-adopted children. A mere power to allocate receipts as between corpus and income, even though expressed in broad language, is not deemed a power over beneficial enjoyment with respect to income or corpus.

(e) *Administrative control.* — Income of a trust, whatever its duration, is taxable to the grantor where, under the terms of the trust or the circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiaries of the trust. Administrative control is exercisable primarily for the benefit of the grantor where—

(1) a power exercisable by the grantor, or any person not having a substantial adverse interest in its exercise, or both, whether or not in the capacity of trustee, enables the grantor or any person to purchase, exchange or otherwise deal with

or dispose of the corpus or the income therefrom for less than an adequate and full consideration in money or money's worth; or

(2) a power exercisable by the grantor, or any person not having a substantial adverse interest in its exercise, or both, whether or not in the capacity of trustee, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest in any case, or without adequate security except where a trustee (other than the grantor or spouse living with the grantor) is authorized under a general lending power to make loans without security to the grantor and other persons and corporations upon the same terms and conditions; or

(3) the grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year; or

(4) any one of the following powers of administration over the trust corpus or income is exercisable in a non-fiduciary capacity by the grantor, or any person not having a substantial adverse interest in its exercise, or both: a power to vote or direct the voting of stock or other securities, a power to control the investment of the trust funds either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, and a power to reacquire the trust corpus by substituting other property of an equivalent value.

If a power is exercisable by a person as trustee, it is presumed that the power is exercisable in a fiduciary capacity primarily in the interests of the beneficiaries. Such presumption may be rebutted only by clear and convincing proof that the power is not exercisable primarily in the interests of the beneficiaries. If a power is not exercisable

by a person as trustee, the determination of whether such power is exercisable in a fiduciary or a nonfiduciary capacity depends on all the terms of the trust and the circumstances surrounding its creation and administration. For example, where the trust corpus consists of diversified stocks or securities of corporations the stock of which is not closely held and in which the holdings of the trust, either by themselves or in conjunction with the holdings of the grantor, are of no significance from the viewpoint of voting control, a power with respect to such stocks or securities held by a person who is not a trustee will be regarded as exercisable in a fiduciary capacity primarily in the interests of the beneficiaries. Where the trust corpus consists of stock or securities of a closely-held corporation, such a power may or may not, depending upon all the facts, be considered exercisable in a fiduciary capacity.

The mere fact that a power exercisable by the trustee is described in broad language does not indicate that the trustee is authorized to purchase, exchange, or otherwise deal with or dispose of the trust property or income for less than an adequate and full consideration in money or money's worth, or is authorized to lend the trust property or income to the grantor without adequate interest. On the other hand, such authority may be indicated by the actual administration of the trust.

(f) *Limitations of section.*—Despite the limitations of this section, the grantor of a trust directing the payment or application of the income therefrom in satisfaction of the grantor's legal obligations shall continue to be taxable on the income. The grantor may also be taxable on the income of a trust on the ground that such income is attributable to him in a capacity unrelated to dominion and control over the trust as such are de-

fined in subsections (c), (d) and (e) of this section. Thus, the provisions of this section do not affect the principles governing the taxability of future income to the assignor thereof whether or not the assignment is by means of a trust. Nor, for example, do the provisions of this section affect the applicability of section 22(a) to the creator of a family partnership. See further sections 166 and 167.

Section 22(a) shall be applied in the determination of the taxability of trust income for taxable years beginning prior to January 1, 1946 without reference to this section.